

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SANDRA ANYATA,

Plaintiff,

-against-

UNITED STATES OF AMERICA, et al.,

Defendants.

USDC SDNY
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DATE FILED: 5/30/2024

22-CV-2405 (GHW) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

At today's status conference, plaintiff appeared by telephone, represented by counsel of record (who apparently mis-calendared today's conference); defendant United States appeared in person, represented by counsel of record; and Michael L. Burke, Esq., of Yoeli Gottlieb & Etra LLP, appeared on behalf of the Montefiore defendants, although he has not yet entered an appearance in this matter.

For the reasons stated on the record during the conference, it is hereby ORDERED that no later than **June 13, 2024**, plaintiff must:

1. Verify her initial and supplemental interrogatory responses, in accordance with Fed. R. Civ. P. 33(b)(5);
2. Serve an updated written response, in accordance with Fed. R. Civ. P. 34(b)(2)(B) and (C), to defendants' request for plaintiff's relevant text messages and emails¹;

¹ Thus far, plaintiff has not produced any responsive text messages or emails. As discussed during the conference, Rules 34(b)(2)(B) and (C) entitle defendants to learn whether this is because they are being withheld on the basis of plaintiff's objections or, alternatively, because there are no responsive text messages or emails within plaintiff's possession, custody, or control. Plaintiff is reminded that, before asserting that there are no responsive text messages or emails, she is required to perform a "reasonable and diligent search" for the requested materials, *Wilson v. Town of Cheektowaga*, 2021 WL 195348, at *3 (W.D.N.Y. Jan. 20, 2021), and that if there is reason to doubt that such a search has been conducted, the court may require an affidavit from her counsel, whose responsibility it is to "monitor" the search and production process. See, e.g., *Jones v. Cattaraugus-Little Valley Cent. Sch. Dist.*, 2022 WL 109352, at *2 (W.D.N.Y. Jan. 12, 2022) (requiring affidavit); *Lokai Holdings LLC v. Twin Tiger USA LLC*, 2018 WL 1512055, at *11

3. Advise defendants whether plaintiff's son (a non-party) will require a subpoena commanding him to appear for deposition.

Judge Moses will conduct a further status conference on **September 17, 2024, at 10:00 a.m.**, in Courtroom 20A of the Daniel Patrick Moynihan United States Courthouse. No later than **September 10, 2024**, the parties shall submit a joint status letter outlining the progress of discovery to date, as well as any settlement efforts. If no discovery controversies exist at that time, the parties may request that the conference be held telephonically.

Dated: New York, New York
May 30, 2024

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge

(S.D.N.Y. Mar. 12, 2018) (assessing spoliation sanctions pursuant to Fed. R. Civ. P. 37(e) where defense counsel, who were obligated to "monitor[] the party's efforts to retain and produce the relevant documents," "fell far short of meeting their responsibilities in these respects").